IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: **J U D G M E N T** ::

S.B. CIVIL FIRST APPEAL NO.69/1988
M/s Satya Vijay General Store & Ors.
Vs.
Bank of Baroda

S.B. CIVIL FIRST APPEAL AGAINST THE JUDGMENT AND DECREE DATED 19.05.1988 PASSED BY THE LEARNED DISTRICT JUDGE, PRATAPGARH IN CIVIL ORIGINAL SUIT NO.66/80 – BANK OF BARODA VS. M/S SATYA VIJAY GENERAL STORE & ORS

DATE OF JUDGMENT : 16th May, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Pawan Ojha for
Mr. S.G.Ojha for the appellants.
Mr. Arun Bhansali for the respondent.

BY THE COURT :

This appeal has been filed by the defendants-appellants M/s Satya Vijay General Store and Others against the judgment and decree dated 19.5.1988 passed by the learned District Judge, Pratapgarh in Civil Original Suit No.66/80 – Bank of Baroda Vs. Satya Vijay General Store, whereby, a decree was passed in favour of the plaintiff-respondent for a sum of Rs.12,000/- with interest up to 12.1.1979 for a sum of

Rs.3774.90/- and interest at the rate of 13-½% per annum from 13.1.79 to 19.5.88 and 6% interest from the date of decree of the suit. The suit of the plaintiff-respondent was that the Bank advanced Rs.12,000/- to the defendants-appellants on 18.10.1976 to cash credit advance. By undertaking transaction with the Bank, a sum of Rs.15,774.90 paisa was standing against the account of defendants-appellants on 12.1.79. On 26.7.79, defendants-appellants accepted the balance of Rs.19,354.55 paisa. No reply was filed by the defendants-appellants. Defence of the defendants-appellants was closed, against which they filed revision before this Court, which too was rejected. Plaintiff-respondent examined PW-1 Suraj Narayan and PW-2 Rishab Lal and proved documents Ex.1 to Ex.14, relating to the transaction of loan. Defendant examined himself. While accepting the advance of loan of Rs.12,000/-, the learned trial court came to the conclusion that if the interest is calculated on the principal amount of Rs.12,000-/- as on 12.1.1979, it comes to Rs.3774.90 paisa. The Court further allowed interest from the same rate from 13.1.79 to 19.5.88, and, thereafter, from 20.5.88, the court allowed 6% interest per annum, which is the date of the decree of the suit.

The cross-objections have also been filed from the side of the Bank, wherein, the Bank has challenged the decree on the

ground that a sum of Rs.3,579.65 paisa was wrongly disallowed by the learned trial court and the contractual rate of interest which is 13.5.% per annum was disallowed till the date of the decree that comes to Rs.9,283.30 paisa. Interest at the rate of 13.5.% on Rs.7,354.55 paisa from the date of decree i.e. 20.5.1988 to 19.5.1988, the difference of interest of Rs.303.30 paisa and total Rs.13,500.80 paisa was claimed in the cross-objections along with the decreetal amount.

I have heard learned counsel for the parties. It has been contended by the learned counsel for the defendants-appellants that there was no opportunity to the defendants-appellants for filing written statement and they have not accepted the confirmation note of the Bank. Further according to him, the interest awarded by the learned trial court from 13.1.79 has been calculated at the rate of 13-½ % per annum. In support of his contention, he has placed reliance on a decision of the Kerala High Court in Catholic Syrian Bank Vs. Mathai, reported in 2002 (3) Civil Court Cases 642. In reply, learned counsel for the plaintiff-respondent has drawn my attention to Section 34 of the Civil Procedure Code and stated that the rate of interest in commercial transaction may be contractual rate of interest and the learned trial court while passing decree has wrongly allowed interest at the rate of 6% per annum on the decreetal amount

till its realisation and the claim of the Bank has also been disallowed by the learned trial court on the amount of interest in its judgment.

Having perused the judgment of the learned trial court, it is clear that by making correct calculation of the interest at the rate of 13-½ % per annum, the learned trial court has came to the conclusion that the interest up to 12.1.79 comes to only Rs.3774.90 paisa. Learned counsel for the respondent-Bank has not been able to rebut this finding of the learned trial court on the interest. The learned trial court has also allowed the same rate of interest till the date of decree of the suit but allowed interest at the rate of 6% per annum on the principal sum of Rs.12,000/- from the date of decree till date of realisation.

In my view, finding of the learned trial court does not call for any interference by virtue of Section 34 of the Civil Procedure Code. The Proviso to Section 34 says that the rate of such further interest in commercial transaction may exceed six per cent per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalized banks in relation to commercial transactions. The word "may" used in Proviso to Section 34 of the Civil Procedure Code denotes that it is not

mandatory on the part of the Court to grant interest as per the contractual rate on commercial transaction after institution of suit. Even, the Court if deems proper can refuse to grant further interest by virtue of clause (2) of Section 34 of the Civil Procedure Code where such a decree is silent with respect to the payment of further interest on principal sum after institution of suit. The decision of the Kerala High Court relied upon by the learned counsel for the appellants-defendants is based on the decision of the Hon'ble Supreme Court in Central Bank of India Vs. Ravindra & Ors., reported in AIR 2001 Supreme Court 3095. It was also a case of Bank transaction. It was held therein that award of interest pendente lite and post-decree is discretionary with the court as it is essentially governed by Section 34 of the Civil Procedure Code which dehors the contract between the parties. When a suit has been filed after calculating the interest on the contractual basis, the contract comes to an end and, thereafter, it is the discretion of the Court to award the interest or refuse it as it deems proper, subject of course, to be used without any caprice or conjecture, which is not apparent in the present case.

In view of the aforesaid, there is no merit in this appeal and also in the cross objections. Accordingly, the impugned judgment & decree of the learned trial court are maintained and

the appeal as well as the cross objections stands dismissed with no order as to costs.

(DEO NARAYAN THANVI), J.

ms rathore